IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.583 OF 2004

Maruti Tukaram Hanamghar & 45 Ors. ..Appellants

Versus

Pune Municipal Corproation, Pune and 2 ors. ..Respondents

Mr.Naveen B. Shah for appellants

Mr.R.S.Ketkar for Respondent nos.1 to 3

CORAM : P.V.KAKADE, J.

DATE : 14TH JUNE, 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by 5th Ad-hoc Additional District Judge, Pune dated 8th January 2004 dismissing their appeal against the judgment and order passed by Civil Judge, Junior Division, Pune dismissing their suit for declaration and perpetual injunction against the defendant-Municipal Council.

2. The plaintiffs have filed the suit for

declaration that the notice dated 3.9.1997 under Section 39 of the MRTP Act 1996 served by defendants on them was illegal and inequitable and not binding upon them and the defendants Corporation was not entitled to evict the plaintiffs out of suit premises i.e. CST NO.247 and 248, Parvati area within the limit of Pune Municipal Corporation and for perpetual injunction to restrain them from evicting the plaintiffs out of the suit premises and demolishing their construction which is in their occupation, situated on suit premises and also mandatory injunction against them to provide suitable alternative site for their rehabilitation.

3. According to the plaintiffs they are occupants of slum which is located on the property since the year 1964 and are tenants of the owners of the impugned property. They are having their residential as well as running their business in the premises. It is further alleged that the land has been declared as slum by Official Gazette and therefore, the plaintiffs are required protection under the Maharasthra Slum Area (Improvement, Clearance and Re-development) Act, 1961, however, some of the plaintiffs are served with the notice by defendant no.3 for the first time on 3.9.1997

informing them that they should vacate the premises occupied by them after demolishing the structure constructed thereon, failing which the appropriate action under Sections 80 and 90 of the Maharashtra Regional Town Planning Act, 1966 would be taken. Hence the suit came to be filed for the said purpose.

4. The defendant-Corporation resisted the claim by filing written statement, inter alia, submitting that the entire averments made in the suit were incorrect, in fact the development scheme for the impugned area was published in the year 1977 and since then the plaintiffs did not raised any objection to that aspect, the scheme was finally sanctioned in the year 1989 and thereafter by virtue of the provisions of Sections 86,87 and 88 of the M.R.T.P. Act the steps are taken as per law and hence notices were issued contemplated under Section 89 of the Act and thus sufficient opportunity was provided to the plaintiffs to raise their objections but they did not do so and hence the suit was sought liable to be dismissed with costs.

5. The learned trial judge settled the issues and adjudicated the dispute after hearing both the sides.

It was held that it was not proved that the entire suit property was declared as Slum within the said relevant Act. It was further proved that the impugned notice dated 3.9.1997 issued by the defendant was illegal and not binding on the plaintiffs and as such the plaintiffs were held not entitled to declaration and perpetual injunction.

. The appeal was carried to the District Court. The learned Addl. District Judge adjudicated the dispute on merits and after hearing both the parties came to the conclusion that the reasoning and findings recorded by the lower court were just, legal and proper and therefore dismissed the appeal. Hence the present appeal.

6. At the outset it may be noted that the only question of law sought to be raised on behalf of the appellants is alleged infringement of principles of natural justice on the part of the defendants qua the plaintiffs. However, in this regard it must be noted that evidently the Town Planning Scheme was formulated and published in the year 1977 which was the proper time for the plaintiffs to raise the impugned issues but they

did not do it and kept mum for years together. Finally the scheme was sanctioned in the year 1989 and by virtue of Section 86(3) it attained finality. It is also pointed out that some of the other plot holders from the impugned property had filed Writ Petition (W.P.No.4960 of 1996) in this Court, but it was also dismissed. Perusal of the judgment of the lower court apparently discloses that it has discussed all the relevant issues in just and proper manner taking into account arguments of both the parties. Moreover, it is needless to mention where the conflict is between the public interest and the private interest, the presumption regarding observance of principles of natural justice must necessarily be weak and may, therefore be readily displaced. In my view this view taken by the learned appellate court is correct, especially in view of the factual matrix revealed from the record that sufficient opportunity was given to the plaintiffs in this regard. So far as technical aspect regarding legality of the notice is concerned, there is no doubt whatsoever that the notice is legal and proper and service is properly made and therefore, on that count no relief can be granted. Besides this aspect, there are no substantial question of law involved in this appeal.

7. In the result the appeal stands dismissed. Consequently the Civil Application also stands dismissed.

8. At this stage the learned counsel for the appellant sought Stay of this order for four weeks. In view of the facts and circumstances the order stands Stayed for four weeks.

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